

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI**

Dennis Allen, et al.	:	
Plaintiffs	:	Case No. C-1-01-159
v.	:	Judge Herman S. Weber
	:	Magistrate Judge Timothy S. Hogan
Leonard Kristal	:	
and	:	PLAINTIFFS REFILED CROSS-
	:	MOTION FOR SUMMARY JUDGMENT
John Crary	:	AGAINST DEFENDANT JOHN L.
	:	CRARY
Defendant	:	

Plaintiffs Dennis Allen, et al. (Plaintiffs) move this Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment against Defendant John L. Crary.¹ No genuine issues of material fact exist concerning Crary s status as a fiduciary, his conduct as alleged in Plaintiffs Amended Complaint, and his failure to comply with the duties imposed on fiduciaries under ERISA. For these reasons, Plaintiffs request the Court enter judgment against Crary and order relief as more fully described in the accompanying memorandum in support.

¹ Plaintiffs previously filed, as a combined pleading, their cross motion for summary judgment against Crary with their response to Crary s motion for summary judgment on November 10, 2003. However, due to a procedural filing error, Plaintiffs were advised by the Clerk s office on November 18, 2003 to refile their cross motion and memorandum in support.

Respectfully submitted,

s/ David M. Cook

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2003, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Stephen R. Felson, 617 Vine Street, Suite 1401, Cincinnati, Ohio 45202, Trial Attorney For Defendant Crary, Paul D. Marotta, The Corporate Law Group, 500 Airport Blvd., Suite 120, Burlingame, CA 94010, Of Counsel for Defendant Crary, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: Leonard Kristal, 107 Diablo Drive Kentfield, California 94904; Christopher D. Denny and Jennifer Chen, The Corporate Law Group, 500 Airport Blvd., Suite 120, Burlingame, CA 94010, Of Counsel for Defendant Crary.____

s/ David M. Cook

ATTORNEY FOR PLAINTIFFS